



Original: English

No.: ICC-02/11-01/15

Date: 6 April 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

With Confidential Annex A and Public Annexes B and C

Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court and application to submit documentary evidence under paragraph 43 of the Directions on the conduct of the proceedings relating to the testimony of Witness P-0045

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

Introduction

1. During the re-examination of Witness P-0045,¹ the Prosecution sought to use video CIV-OTP-0095-0368. The Defence team of Laurent Gbagbo did not oppose the presentation of the video to the Witness in court.² However, the Chamber directed the Prosecution to instead file a written application.³
2. The Prosecution hereby applies for an extension of time to reclassify video CIV-OTP-0095-0368 as incriminatory material and add it to its List of evidence, under regulation 35 of the Regulations of the Court ("Regulations"), articles 64(3)(c), 64(3)(f) and 69(3) of the Statute, and rules 76(2) and 84 of the Rules of Procedure and Evidence ("Rules").
3. If granted, the Prosecution applies to submit the above mentioned video pursuant to paragraphs 43 and 44 of the Directions on the conduct of the proceedings ("Directions").⁴ A transcript of the video bearing ERN CIV-OTP-0097-0136 is available and proposed for submission along with the video.
4. The video CIV-OTP-0095-0368 and its transcript CIV-OTP-0097-0136, currently disclosed pursuant to rule 77 of the Rules, are available on eCourt to the Trial Chamber and have been disclosed to the Defence. Confidential Annex A contains the investigator's report CIV-OTP-0095-0420 explaining the circumstances of collection of the video. Annex B contains a table describing the relevance and probative value of the proposed video, as required under paragraph 44 of the Directions. Annex C consists of the public redacted version of the investigator's note.

Confidentiality

5. Annex A is classified as "Confidential" pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, as it refers to evidence that is not yet available to the public or evidence treated as confidential in nature.

¹ Witness P-0045 testified on 8 and 9 February 2017 in relation to the radio networks used by the FDS.

² ICC-02/11-01/15-T-119-Red-ENG, p. 109, l. 25 to p.110, l. 3.

³ ICC-02/11-01/15-T-119-Red-ENG, p. 111, l. 5-6.

⁴ ICC-02/11-01/15-498-AnxA.

Submissions

6. The Prosecution seeks authorisation to reclassify and add video CIV-OTP-0095-0368 to the record of the case as it corroborates Witness P-0045's testimony and relevant to the conduct of the *Garde Républicaine*. This evidence relates in part to orders given by members of the *Garde Républicaine* in particular by the Chief of Operations, Col. Mody. It also consists of evidence of pattern relating to killings of civilians in Abidjan during the post-electoral crisis by pro-Gbagbo forces linked to the Presidency.

Regulation 35 request

7. Video CIV-OTP-0095-0368 consists of a French TV show on TF1 channel, called *Sept à huit* and originally broadcasted in May 2011. It relates to the disappearance of four civilians from the Novotel Hotel in Abidjan on 4 April 2011. Witness P-0045 is interviewed with his face concealed and his voice distorted.⁵ Footage related to the witness can be viewed from 00:07:45 to 00:08:40. Witness P-0045 shows to the TV crew the notes he took during the post-electoral crisis. From 00:08:07 to 00:08:22, the video zooms into the original note of the witness regarding the Novotel incident. At 00:08:25, the video zooms into the original note of a document which is attached as Annex 7 of the Witness's statement.⁶
8. The Prosecution seeks permission to reclassify the video as incriminatory material and add it to its List of evidence, after the expiry of the 30 June 2015 deadline set in the Chamber's order of 7 May 2015,⁷ based on regulation 35(2) of the Regulations. Under this regulation, after the lapse of the time limit, "an extension may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control."

⁵ From 00:07:45 to 00:08:40.

⁶ CIV-OTP-0005-0033.

⁷ ICC-02/11-01/15-58, paras. 22 and 25.

9. The Prosecution was not in a position to comply with the deadline set by the Chamber as it only became aware of the existence of the video in May 2016, nor was the video available via open source. As described in the investigator's report contained in Annex A, investigators met with Witness P-0045 on 30 May 2016. During that meeting, Witness P-0045 informed the investigators that in April 2011 he had been interviewed by a French TV crew from the TF1 journal *Sept à huit*. Following up on that information, the investigators located on Youtube a clip of the relevant report from *Sept à huit*. The clip was uploaded on Youtube on 26 April 2016, although originally broadcast on 22 May 2011. It was located and registered by the Prosecution on 12 July 2016 and disclosed to the Defence on 21 July 2016.⁸
10. When asked whether he still possessed his original notes, the Witness replied that they must be in his home.⁹ He added that before coming to testify in The Hague, he searched for his notes, but since he had moved several times, he could not locate them.¹⁰
11. The Prosecution therefore sought permission to use the video by way of email, in the morning before the start of Witness P-0045's testimony since his original notes can be seen on the video.¹¹ During the re-examination, the Prosecution sought to use the video. However, the Chamber directed the Prosecution to submit a written application.¹²
12. The addition of the video on the Prosecution's List of Evidence does not cause undue prejudice to the Defence because 1) the video is submitted to support Witness P-0045's assertion that he took notes during the post-election crisis; and 2) the Defence team of Laurent Gbagbo did not oppose the presentation of the video to the witness in court.¹³

⁸ The video was disclosed in Rule 77 package 43 on 21 July 2016.

⁹ ICC-02/11-01/15-T-118-Red-ENG, p. 28, l. 18 to p. 29, l. 2.

¹⁰ ICC-02/11-01/15-T-118-Red-ENG, p. 28, l. 21-23.

¹¹ See email from the Prosecution to the Chamber and the Parties dated 8 February 2017 at 09:15.

¹² ICC-02/11-01/15-T-119-Red-ENG, p. 111, l. 5-6.

¹³ ICC-02/11-01/15-T-119-Red-ENG, p. 109, l. 25 to p.110, l. 3.

13. The video shows Witness P-0045 with his face concealed. The speaker presents him as a former warrant-officer in charge of the transmissions (*"ancien sous-officier chargé des transmissions"*) who listened to communications of the Republican Guard for many hours. Witness P-0045 shows his notes about the Novotel incident that the speaker reads out. Witness P-0045 already testified on all these points.¹⁴ The video only corroborates his testimony.
14. The issue of the witness' credibility was raised by Defence through extensive examination on the witness' notes and other Defence comments.¹⁵ The video corroborates the witness' testimony as it is contemporaneous footage of his original notes. The footage clearly shows the original notes of the witness that he presented to the TV crew in April 2011, as the camera zooms in from 00:08:07 to 00:08:25.
15. The first page shown at 00:08:07 of the video is his original note regarding the package (*"colis"*) at the Novotel Hotel. It corresponds to the description Witness P-0045 made of this note during his testimony¹⁶ and has the exact same text as in Annex 1 of the witness' statement.¹⁷ Witness P-0045 explained that Annex 1 is a copy of what is on the original with proper handwriting¹⁸ but that the information appeared, in the original, in the bottom part of the page, which is indeed the case as can be seen on the video¹⁹.
16. The second page shown at 00:08:25 is the original version of Annex 7 of the witness statement.²⁰ The video is therefore relevant for the assessment of the witness's credibility and more generally for the interest of justice.

¹⁴ ICC-02/11-01/15-T-118-Red-ENG, p. 20-21, 61.

¹⁵ ICC-02/11-01/15-T-118-Red-ENG, p. 88-90 and ICC-02/11-01/15-T-119-Red-ENG, p. 4-6, p. 13-14, 20-24, 63 and 110.

¹⁶ ICC-02/11-01/15-T-118-Red-ENG, p. 63, l. 3-8.

¹⁷ CIV-OTP-0005-0019, page 0021 formally submitted on 8 February 2017.

¹⁸ ICC-02/11-01/15-T-118-Red-ENG, p. 63, l. 3-8.

¹⁹ ICC-02/11-01/15-T-118-Red-ENG, p. 63, l. 6-8: "It should be further down. There were events that occurred earlier, but this happened later."

²⁰ CIV-OTP-0005-0033, page 0033 formally submitted on 8 February 2017. *See also* ICC-02/11-01/15-T-118-Red-ENG, p. 56-59.

Paragraph 43 request

17. If the Chamber grants the request to reclassify the video as incriminatory material and add it to the List of Evidence, the Prosecution seeks to introduce the video and its transcript through paragraph 43 of the Directions.
18. For the same reason the video should be reclassified it should also be submitted on the record. Given that the Witness has already testified, submitting the video via paragraph 43 is the only available mode of submission.

Conclusion

19. For the reasons detailed above, the Prosecution seeks an extension of time to reclassify video CIV-OTP-0095-0368 as incriminatory material and add it to its List of Evidence. If granted, the Prosecution requests that the video be considered submitted in the record of the case, along with its transcript CIV-OTP-0097-0136.



Fatou Bensouda, Prosecutor

Dated this 6th day of April 2017
At The Hague, The Netherlands